

United States on October 5, 1990, as a lawful permanent resident. Because B became a resident of the United States before the close of the third calendar year (1990) beginning after the close of the initial residency period (August 1, 1987), he is subject to tax under section 877(b) for the intervening period of nonresidency, August 2, 1987 through October 4, 1990, if the amount of the tax imposed under section 877 is more than the tax imposed under section 871.

[T.D. 8411, 57 FR 15250, Apr. 27, 1992]

§ 301.7701(b)-6 Taxable year.

(a) *In general.* An alien individual who has not established a fiscal year as his or her taxable year prior to the period that the individual is subject to United States income tax as a resident or a nonresident shall adopt the calendar year as his or her taxable year. An alien who has established a fiscal year in a foreign country prior to the period that the individual is subject to United States income tax may adopt the calendar year as his or her taxable year for United States income tax purposes without requesting a change in accounting period. An individual will be considered to have established a fiscal year (whether in the United States or a foreign country) if the annual accounting period on which the individual computes his or her income is a fiscal year, the individual keeps his or her books in accordance with that fiscal year, and the requirements of section 441 and § 1.441-1(b) of this chapter are otherwise satisfied. An alien who has established a fiscal year and is a resident alien during the calendar year will be treated as a resident alien with respect to any portion of his or her taxable year (beginning with the individual's residency starting date and ending with the individual's residency termination date) that falls within such calendar year. Once the individual has established either a fiscal or calendar year taxable year for any period for which the individual is subject to United States income tax, the individual may not change that taxable year without the approval of the Secretary. See section 442.

(b) *Examples.* The following examples illustrate the operation of this section:

Example 1. B, a citizen and resident of foreign country F, was engaged in a United States business during 1982 and filed a return

on a fiscal year basis. B's fiscal year runs from October 1 to September 30. B comes to the United States on March 8, 1985 and remains in the United States until October 10, 1985, when he returns to country F. B maintains a closer connection to and his tax home in Country F for the remainder of calendar year 1985. B, who is not a United States resident at any time in 1986, is a United States resident for the period that begins on March 8, 1985, and ends on October 10, 1985. B has adopted a fiscal year taxable year for purposes of computing his United States income tax liability. For his fiscal year that ends on September 30, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985 and ends on September 30, 1985. For his fiscal year that ends on September 30, 1986, B will only be taxed as a United States resident for the period that begins on October 1, 1985 and ends on October 10, 1985.

Example 2. The facts are the same as in *Example 1*, except that B's 1982 business was a country F business established on a fiscal year basis and at no time prior to 1985 was B subject to United States income tax. B may adopt a calendar year as his taxable year for United States income tax purposes without requesting a change of accounting period. B continues to use a fiscal year as his taxable year. For his fiscal year that ends on September 30, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985 and ends September 30, 1985. For his fiscal year that ends on September 30, 1986, B will be taxed as a United States resident for the period that begins on October 1, 1985 and ends on October 10, 1985.

Example 3. The facts are the same as in *Example 1*, except that B's 1982 business was a country F business established on a fiscal year basis and at no time prior to 1985 was B subject to United States income tax. B may adopt a calendar year as his taxable year for United States income tax purposes without requesting a change of accounting period. B adopts a calendar year as his taxable year for 1985. For his calendar year taxable year ending on December 31, 1985, B will be taxed as a United States resident for the period that begins on March 8, 1985, and ends on October 10, 1985.

[T.D. 8411, 57 FR 15250, Apr. 27, 1992; 57 FR 28612, June 26, 1992, as amended by T.D. 8996, 67 FR 35012, May 17, 2002]

§ 301.7701(b)-7 Coordination with income tax treaties.

(a) *Consistency requirement*—(1) *Application.* The application of this section shall be limited to an alien individual who is a dual resident taxpayer pursuant to a provision of a treaty that provides for resolution of conflicting